

REMARKS

Claims 1 through 20 stand rejected.

Claims 1, 5, 10, 16, and 19 have been amended to more particularly point out and distinctly claim the subject matter that Applicants regard as their invention.

Claims 1 through 10 remain in the application.

This amendment is made to place the application into condition for allowance.

In the alternative, this amendment is made to place the application into better form for consideration on appeal.

Reconsideration and re-examination of the application, as amended, are respectfully requested.

THE §112 REJECTION

Claim 5-9 and 16-20 were rejected under 35 U.S.C. §112, second paragraph, due to a lack of antecedent basis for "traction member" and "cork element". By this amendment, Applicants have rendered the terms to conform with language in their base claims. Applicant submits that the claims, as amended, are in compliance with under 35 U.S.C. §112.

THE §102 REJECTIONS

Claims 1-3 and 10-14 were rejected under 35 U.S.C. 102(b) as being anticipated U.S. Patent No. 2,967,737 to Moore. Claims 1-4 and 10-15 were rejected under 35 U.S.C. 102(b) as being anticipated U.S. Patent No. 3,117,824 to Wadsworth. Claims 1, 2, 3, 10, and 11 were rejected under 35 U.S.C. 102(b) as being anticipated U.S. Patent No. 4,123,119 to Stedman. Claims 1, 5, 10, and 16 were rejected under 35 U.S.C. 102(b) as being anticipated U.S. Patent No. 4,727,948 to Julseth. These rejections, insofar as they may be applied to the claims as amended, are respectfully traversed.

The cited references fail to disclose traction grouser elements as set forth in Applicants' claims. The Moore patent is directed to street shoes 24 intended to lessen the impact of the grousers. The Wadsworth patent shows plates that function similarly to the shoes of Moore. Neither of these patents shows a traction grouser

element in addition to standard cleats. The Stedman patent deals with track shoes widened to provide substantial surface contact and low-pressure engagement with the ground. The Stedman shoes function similarly to the Wadsworth and Moore arrangements, in that they are intended to increase surface contact rather than provide traction grousers that bite into the traversed surface. In Julseth, a pair of endless belts 74 are provided and comprise elongated belt sections 76 including outer and inner surfaces 80 and 82. A plurality of channel sections 84 including divergent arms 86 are secured to each section 76 at points spaced longitudinally therealong over the inner surface 82 thereof and an equal number of channel cleats 83 are secured to each section 76 over the outer surface 80 thereof, each channel cleat 83 and a corresponding channel section 84 being secured to the corresponding section 76 through the utilization of a plurality of threaded fasteners 90 secured through the section 84 and cleat 83 as well as the section 76. Julseth deals with attaching the cleats themselves, rather than traction grousers in addition to the cleats.

By contrast, each of Applicants amended claims positively recites structure and function that is simply not present in the cited reference. Each of Applicants amended independent claims is directed to an apparatus in which traction cleats are provided to enhance the bite or traction of cleated tracks.

It is well established that for a claim properly to be rejected under 35 U.S.C. 102, every element of the claimed invention must be present in the cited reference. As set forth above, the cited references fail to teach every element of Applicants' claimed invention as set forth in the amended claims. Consequently, Applicant respectfully submits that the rejections under 35 U.S.C. 102(b), as they may be applied to claims 1-5 and 10-16 are improper, and should be withdrawn.

35 U.S.C. 102(f) REJECTION

Claims 1-20 were rejected under 35 U.S.C. 102(f) because the Applicants are asserted to have not invented the claimed subject matter. This rejection is respectfully traversed.

After the filing of the parent case for this application, Applicants' representative was made aware of circumstances that indicated that Thomas McNutt and Darby McNutt were the only joint inventors of the subject matter claimed. The present application is a was filed following the advice set forth in MPEP § 201.03,

which states that "Correction of inventorship may also be obtained by the filing of a continuing application under 37 CFR 1.53 without the need for filing a request under 37 CFR 1.48, either in the application containing the inventorship error (to be abandoned) or in the continuing application." Applicants submit that this application was filed in accordance accepted Office practice, and confirm that they are the two inventors named in the parent application. Consequently, the rejections under 35 U.S.C. 102(f), are improper, and should be withdrawn.

THE §103 REJECTION

Claims 6 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,727,948 to Julseth in view of U.S. Patent No. 5,573,310 to Rollison. Claims 1-4, 7, 8, 10-14, 18, and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,462,183 to Boggs in view of U.S. Patent No. 4,587,280 to Guha. These rejections, insofar as they may be applied to the claims as amended, are respectfully traversed. Applicant respectfully submits that, for the reasons that follow, the Examiner has failed to establish a prima facie case for obviousness.

In *Graham v. John Deere Co.*, 383 U.S. 1 (1966), the Supreme Court indicated that "under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level ordinary skill in the art resolved." 383 U.S. 1 at 17.

SCOPE AND CONTENT OF THE PRIOR ART

The scope and content of U.S. Patent No. 4,727,948 to Julseth is set forth hereinabove.

U.S. Patent No. 5,573,310 to Rollison is directed to a ground engaging tire assembly in the form of a wheel for a vehicle, comprising a rim (11) and a plurality of ground engaging elements (13) mounted on the rim. Each ground engaging element (13) comprises a hollow body (31) having an inner face (32) in engagement against the rim and an outer face (33) for contacting the ground. The hollow body (31) also has side faces (34) extending between the inner and outer faces. The side faces (34) are constructed to be resiliently flexible for deflection under normal load

conditions thereby to provide cushioning for the vehicle. The ground engaging elements are so positioned on the rim that confronting side faces of neighboring elements provide lateral support for each other when deflecting under load

U.S. Patent No. 4,482,193 to Doggs shows a roadable track assembly (12) includes a plurality of track shoes (14) having a roadable grouser (20) bar attached to each shoe (14).

U.S. Patent No. 4,587,280 to Guha deals with tractor wheels.

DISCUSSION OF THE PRIOR ART AND THE CLAIMS AT ISSUE

Applicants' claims recite structure and function that are not found in the references of record. Each of Applicants' amended independent claims is directed to an apparatus in which traction cleats are provided to enhance the bite or traction of cleated tracks. These features are lacking entirely from the cited references.

THE LEVEL OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art would never be motivated to combine the cleated tracks of Jukeshi with the tire treads of Rollison, or the track shoes of Doggs with the wheels of Guha, to arrive at the traction grousers positively recited in Applicants' claims. Each of Applicant's claims, as amended, requires structure and function that is not present in any permissible combination of the cited references.

Applicant submits that the question under § 103 is whether the totality of the prior art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Merck & Co., Inc.*, 231 U.S.P.Q. 376 (Fed. Cir. 1990). The answer to this question with respect to Applicant's claimed invention is clearly "no".

It is insufficient that the prior art disclosed the components of the claimed device, either separately or used in other combinations; there must be some teaching, suggestion, or incentive to make the combination made by the inventor. *Interconnect Planning Corp. v. Feil*, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1986) ("A claimed reference is deemed to "teach away" as it would be recreate a facsimile of the claimed invention." *Northern Telecom Inc. v. Datapoint Corp.*, 15 U.S.P.Q. 2d 1321, 1323 (Fed. Cir. 1990).

With the analysis of the deficiencies of the applied references in mind as enumerated above, there is no reason or suggestion in the evidence of record as to why one of ordinary skill in the art would have been led to produce the claimed invention. Therefore, *prima facie* obviousness has not been established.

The Examiner has failed to meet the test for obviousness as set forth in Graham v. John Deere Co. Withdrawal of the §103 rejection is in order, and therefore respectfully requested.

In view of the foregoing remarks and amendments, Applicants respectfully submit that claims 1 through 20, as amended, define allowable subject matter. The Examiner is requested to indicate the allowability of all claims in the application, and to pass the application to issue.

Respectfully submitted,

By 

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I hereby certify that this paper or fee is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313, on this 10th day of December, 2004. Name of person depositing paper or fee: Patrick Burkhart

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